

Office of Chief Counsel
Internal Revenue Service
Memorandum

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CC:ITA:B05:
POSTF-133981-08

UILC: 61.00-00, 6041.00-00

date: November 5, 2008

to: Associate Area Counsel (SBSE),
Area 1
Attn: John Aletta, Senior Counsel

from: Associate Chief Counsel (Income Tax & Accounting)
CC:ITA:05 /s/ by William A. Jackson

subject: Tax Treatment of Payments Made Pursuant to Program M

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

LEGEND:

State A =

Program M =

ISSUE

(1) Whether certain payments received by taxpayers from State A pursuant to Program M, in connection with the taxpayers' purchase and installation of energy efficient furnaces and boilers, are includible in the taxpayers' gross incomes under IRC § 61; and (2) Whether such payments are subject to information reporting under IRC § 6041.

CONCLUSION

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The payments made to, for, or on behalf of homeowners participating in State A's Program M are in the nature of general welfare and are not includible in the recipients' gross incomes under section 61; further, they are not required to be reported by the payor under section 6041.

FACTS

In _____, State A enacted legislation establishing Program M, effective _____. Pursuant to this program, State A will provide State A taxpayers with a one-time payment of up to \$500 if they purchase and install in residential structures energy efficient furnaces or boilers that either meet or exceed federal "Energy Star" standards or are not less than 84% efficient. A payment is not dependent upon the purchase price paid for the boilers or furnaces (however, it can generally be presumed that the cost of purchasing and installing a boiler or furnace would exceed the payment to be received from the State under the program). The payments are made directly to or on behalf of low and moderate-income households from the State's general fund.

Taxpayers who receive payments under the program do not receive a tax deduction or credit on their State A income tax returns for purchasing qualified boilers or furnaces. Moreover, the payment is not in the form of a refund of any tax paid to State A.

The purpose of this request for Chief Counsel Advice is to assist the SB/SE Area Counsel in responding to inquiries regarding State A's Program M.

LAW AND ANALYSIS

Gross Income Defined

Section 61(a) of the Code provides that, except as otherwise provided by law, gross income means all income from whatever source derived. Although section 61 provides for broad includibility in gross income, the Internal Revenue Service (IRS) has consistently held that payments to individuals, by governmental units under legislatively provided social benefit programs, for promotion of the general welfare, that do not represent compensation for services, are excludable from the recipient's gross income ("general welfare exclusion").

Rev. Rul. 78-170, 1978-1 C.B. 24, provides that payments made by a State to, for, or on behalf of low and moderate-income individuals, to help reduce the cost of winter energy consumption, are in the nature of relief payments made for promotion of the general welfare, are not includible in the gross incomes of the recipients for federal income tax purposes.

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State A has established Program M to assist low and moderate-income individuals and families in reducing energy consumption and waste. Compare Rev. Rul. 78-170. We conclude, therefore, that the described Program M payments made to, for, or on behalf of homeowners participating in Program M are in the nature of general welfare and, as such, are not includible in the gross incomes of the recipients.

Information Reporting Requirements

You also inquired about possible information reporting requirements for payments made to, for, or on behalf of the homeowners participating in Program M.

Sections 6041(a) of the Code and 1.6041-1(a)(1)(i) of the Income Tax Regulations (regulations) provide, with exceptions not applicable here, that all persons engaged in a trade or business and making payment in the course of such trade or business to another person of fixed or determinable gains, profits, and income, aggregating \$ 600 or more in the taxable year must file an information return.

The word “income” as used in section 6041 means “gross income,” and not the gross amount paid. Thus, section 6041 requires the reporting of only those payments of \$600 or more includible in a recipient’s gross income.

In this case, because the payments made to, for, or on behalf of homeowners participating in State A’s Program M are in the nature of general welfare and are not includible in the recipients’ gross income, they are not required to be reported under section 6041.

Accordingly, we conclude that the payments made by State A to, for, or on behalf of homeowners participating in Program M:

- (1) are not income to the participating homeowners under section 61 of the Code;
- and
- (2) are not required to be reported under section 6041 on Forms 1096 or 1099.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

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Thank you for soliciting our views in this matter. If you have any questions concerning this memorandum, please contact Michael Schmit or William Jackson, at (202) 622-4960, or me at 202-622-4800.

George J. Blaine
Associate Chief Counsel
Income Tax and Accounting

/s/ William A. Jackson

By _____
William A. Jackson
Chief, Branch 5
Income Tax and Accounting

Attachment:
Copy of this memorandum